IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2967 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT AGRO IND C LTD

Versus

MR. KESHUBHAI DULABHIA PADIYAR

Appearance:

1. Criminal Misc.Application No. 2967 of 1995

MS PJ DAVAWALA for Petitioner No. 1-4

MR JITENDRA M PATEL for Respondent No. 1

MS HANSA PUNANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/10/2003

ORAL JUDGEMENT

1. Heard Ms. P.J. Dawawala, learned counsel for

the petitioners, Mr. Trilok Patel for Mr.J.M. Patel for the respondent-complaint, and Ms. Punani learned Additional Public Prosecutor for the State.

2. The present petition has been filed by the present petitioners against the process issued by the learned Judicial Magistrate, First Class, Jambusar in Criminal Case No. 1150/94. In the said Criminal Case, the petitioners herein filed an application pointing out that the same complainant had earlier filed another Criminal Complaint, being Criminal Case No. 794 of 1994, against the same accused persons earlier also, which was subsequently unconditionally withdrawn by the complainant on 1.8.1994 and therefore the second complaint is not maintainable. However, learned JMFC rejected the said application.

2.1 Being aggrieved, the petitioners-accused have filed this petition in this Court stating that prior to filing the complaint in question the respondent-complainant had also filed Criminal Case No. 794/94 in the Court of JMFC Jambusar for the same alleged offence wherein by way of purshis dated 1.8.94 filed by the respondent-complainant in the said court it was stated that the matter between the parties has already been settled and complainant has received cheques No. 359758 and 359759 and nothing further remains and therefore prayed for withdrawal of the complaint. In turn the same has been disposed of by the learned JMFC, Jambusar. Thereafter, the respondent filed another case before the JMFC, Jambusar, which has been numbered as Criminal Case No. 1150 of 1994 wherein the learned JMFC ordered issuance of process against which the present petition is preferred.

3. This matter was heard by me on merits on an earlier occasion also. Thereafter the parties have settled the matter outside the Court and the petitioners have produced before me a `Kabulatnama' dated 15.10.2003 duly signed by the respondent-complainant as also the learned advocate for the petitioners and the respondents. The same is ordered to be taken on record. It is stated in the `Kabulatnama' that the respondent-complainant has received amount from the petitioner-Company in full and final settlement of all his claims and there is no outstanding dues from the Company. In view of this, nothing survives in this matter, and the petition is required to be allowed.

4. Even otherwise, it is apparent that the dispute involved in this matter is of civil nature. Moreover, a

previous complaint filed for the same cause of action has been withdrawn by the complainant unconditionally, and therefore also, the subsequent complaint is not maintainable. In that view of the matter also, this application is required to be allowed.

5. In the result, this petition is allowed. Criminal Complaint No. 1150 of 1994 and the process issued therein by the learned JMFC Jambusar is quashed and set aside. This petition stands allowed accordingly. Rule made absolute accordingly.

[R.P. DHOLAKIA, J.]
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